

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COLONIAL ASSURANCE COMPANY	:	CIVIL ACTION
et al.	:	
	:	
v.	:	
THE MERCANTILE AND GENERAL	:	
REASSURANCE COMPANY Ltd. et al.	:	NO. 03-1818

Anita B. Brody, J.

March 1, 2004

MEMORANDUM AND ORDER

On December 11, 2003, I issued a Memorandum and Order granting M & G's motion to dismiss with respect to all claims (Docket #30). On December 22, 2003, Colonial filed a Petition for Reconsideration (Docket #31).¹ Colonial requests that I reconsider my order as to Colonial's claim for unjust enrichment.

Colonial makes the following claims in its Petition for Reconsideration:

2. This Honorable Court held that the Plaintiff's claims for Unjust Enrichment expired in the late 1980s, but in rendering this holding the Court overlooked the following:
 - a. That reinsurance agreement has been declared in 1993 to void back to the date of its inception;
 - b. The right to make the claim for the return premium accrued in 1993 when the New York Court that (sic) rescinded the residual value guarantee line of insurance of insurance back to its inception;
 - c. The internal provision in the Liquidation statute relating to a two-year

¹Colonial does not cite the procedural rule on which it relies in seeking reconsideration of this court's Memorandum and Order. The Court assumes, however, that Colonial brings this motion under Federal Rule of Civil Procedure 59(e).

- limitations is not applicable to the collection of unearned premiums; and
- d. Alternatively, as the right to the cause of action did not exist at the time of the liquidation, the second portion of the “actions by and against the liquidator” provision applies that provides a basis for this Honorable Court to deem the claim for Unjust Enrichment timely (sic).
3. Furthermore, this Honorable Court considered matters outside the record in ruling upon the Defendant’s motion to dismiss, but this Honorable Court did not take into account that a stay had been entered into the underlying matter on behalf of Colonial as against the Defendant on May 17, 1988.

The facts of this case are laid out in my previous order and I need not re-state them here.

II. STANDARD FOR MOTION FOR RECONSIDERATION

“The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.” *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration is only appropriate where: (1) there has been an intervening change in controlling law; (2) new evidence is available; or (3) there is need to correct a clear error of law or prevent manifest injustice. *N. River Ins. Co. v. Cigna Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995) (citation omitted). “Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly.” *Continental Casualty Co. v. Diversified Indus., Inc.*, 884 F. Supp. 937, 943 (E.D. Pa. 1995). “Motions for reconsideration should not relitigate issues already resolved by the court and should not be used ‘to put forward additional arguments which [the movant] could have made but neglected to make before judgment.’” *Reich v. Compton*, 834 F. Supp. 753, 755 (E.D. Pa. 1993) (citing *Dodge v. Susquehanna Univ.*, 796 F. Supp. 829, 830 (M.D. Pa. 1992)). For this reason, I will deny the motion for reconsideration. I will respond to the new issues raised for purposes of completeness.

III. DISCUSSION

Colonial argues that the recovery of reinsurance premiums by the statutory liquidator is governed by 40 P.S. § 221.35 (2003), which has no applicable statute of limitations, rather than

40 P.S. § 221.26(b), which tolls the applicable statute of limitations as of the filing date of the petition for liquidation and grants the liquidator two more years to bring the cause of action.

Section § 221.35 states:

(a) An insured, agent, broker, premium finance company or any other person responsible for the payment of a premium shall be obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency whether earned or unearned as shown on the records of the insurer. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission of such person. Credits and/or setoff shall not be allowed to an agent, broker or premium finance company on account of any credits volunteered by such person.

As is obvious from the text, this statute applies to insureds, agents, brokers, and finance companies, in other words, persons who are responsible for the payment of premiums. M&G was Colonial's insurance company. M&G did not pay premiums, but instead was paid premiums. Therefore, this statute does not apply in the instant case. Colonial's action for unjust enrichment is subject to the statute of limitations set out in 221.26(b).

Colonial argues that the cause of action for the return of premiums accrued in 1993 when the New York Court declared the reinsurance agreement void. Colonial offers no support for this contention. Under Pennsylvania law, a cause of action for unjust enrichment accrues as of the date the relationship between the parties is terminated. *Cole v. Lawrence*, 701 A.2d 987, 989 (Pa. Super. Ct. 1997). An attempted rescission qualifies as a termination of the relationship between the parties because a rescission is "indisputably" a[] method of terminating a contract." *Metro. Prop. & Liab. Ins. Co. v. Commonwealth*, 509 A.2d 1346, 1349 (Pa. Commw. Ct. 1986). Thus, the cause of action accrued in 1982 when M & G terminated its relationship with Colonial by seeking rescission. As this claim is subject to the statute of limitations as set out in 221.26(b), this claim is time-barred. Even had the cause of action accrued in 1993, the claim would still be time-

barred.

The stay imposed by Judge Baer in 1988 does not change this conclusion. Judge Baer stayed the actions against Colonial. The stay did not limit Colonial's right to take legal action against another.

Colonial's claim against M&G for unjust enrichment is time-barred. Accordingly, M&G's motion to dismiss was appropriately granted.

ORDER

AND NOW, this day of March 2004, plaintiff's motion for reconsideration (Docket #31) is **DENIED**.

ANITA B. BRODY, J.

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